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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1621

REYNOLDS METALS COMPANY, *Petitioner,*

v.

ALUMINUM COMPANY OF AMERICA, AND NATIONAL CAN CORPORATION, *Respondents.*

REPLY TO OPPOSITIONS TO REYNOLDS PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

REYNOLDS METALS COMPANY
Petitioner

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Both respondents and the Court of Appeals incorrectly quoted the findings of fact of the trial court of two principal and substantial differences between the Bylund inventions and the prior art (26a)[1]:

> "There exists two principal and substantial differences between Mr. Bylund's inventions and the prior art:
>
> (1) The elimination of annealing or stress relieving in the process of making drawn and

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[1] References herein are to correct quotations in Reynolds' Appendix to its petition. These are not the "only" differences as incorrectly stated on page 2 of Alcoa's Opposition to the Petition.

ironed aluminum cans *from the beginning of cold rolling through the ironing operation;* and,

(2) The making of aluminum alloy sheet by selecting the *amount of alloy elements* to achieve sufficient ductility and strength to be able to cold roll and *draw and iron same into a can body without thermal treatments.* (Emphasis added.)"

Neither respondents nor the Court of Appeals correctly evaluated the findings of fact regarding the nonobviousness of the Bylund inventions over the prior art including Metal Flo (27a):

> "The inventions in issue are nonobvious because Mr. Bylund went opposite to the direction the art was going at that time in two significant respects:
>
> (1) The art was going to high strength alloys in "O" temper to gain strength, whereas Bylund was going to H19 temper sheet;
>
> (2) The art was going to higher alloy content to achieve strength, whereas Bylund was going to temper to achieve strength with alloying content being whatever was necessary to make a satisfactory can.
>
> History shows that the Bylund approach was correct and the prior art approach was not."

Contrary to Federal Rule 52(a), the Court of Appeals made its own independent and erroneous evaluation of Metal Flo, which clearly involved heat (33a), to strike down an invention which was a substantial contribution to American productivity. It erroneously assumed the role of deciding factual matters *de novo,* a role prohibited under *Zenith Radio Corp.* v. *Hazeltine Research, Inc.,* 395 U.S. 100, 123 (1969).

It is a devastating blow to innovation that a Court of Appeals can ignore Rule 52 to make its own erroneous findings, contrary to what the whole industry thought about Metal Flo, especially Alcoa who originally published its claim for the Bylund inventions (23a, RM Ex. 2011, RMA1):

> In new developmental and experimental work, Alcoa research and development groups are performing operations with H-19 temper rigid container sheet *that standard metalworking texts and handbooks say cannot be done.* H-19 temper rigid container sheet is blanked and drawn without intermediate anneals to form seamless can bodies. (Emphasis added.)

Metal Flo did not teach the industry to eliminate heat; *everyone rejected it for cans* (33a). Only Mr. Bylund discovered that draw and iron cans could be made without intermediate anneals and that is a fact (26a)!

Respectfully submitted,

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